Supreme Court, U.S.
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In the Supreme Court of the United States

LINWOOD E. MOORING,

Petitioner,

V.

EAST CAROLINA UNIVERSITY, et al

Respondent,

On Petition for Writ of Certiorari
To The Fourth Circuit Court Of Appeals

APPENDIX 14 - 46

Linwood E. Mooring
1306 Drum Avenue
Greenville, NC 27834
Tel. (252) 757-1568
Fax (252) 757-2898
Pro se Petitioner

Formatted by Mooring House Press 252 757-1568
P. O. Box 1072, Greenville, NC 27835

36 pp

3 "[A] motion to dismiss a complaint should not be granted unless it appears beyond doubt that the plaintiff can prove no set of facts which would entitle him to relief. **Thomas W. Garland, Inc. v. City of St. Louis, 596 F.2d 784, 787 (8th Cir.), cert. denied, 444 U.S. 899, 100 S. Ct. 208, 62 L.Ed.2d 135 (1979).** We must take the well-pleaded allegations of the complaint as true, and construe the complaint, and all reasonable inferences arising there from, most favorably to the pleader. **United States v. Mississippi, 380 U.S. 128, 143, 85 S. Ct. 808, 816, 13 L.Ed.2d 717 (1965); see also Bennett v. Berg, 685 F.2d 1053, 1058-59 (8th Cir. 1983); Bramlet v. Wilson, 495 F.2d 714, 717 (8th Cir.1974). " Morton v. Becker, 793 F.2d 185,187 (8th Cir.1986); accord Conley v. Gibson, 355 U.S. 41, 45-46 (1957).** In considering a motion to dismiss, courts accept a plaintiff s factual allegations as true, but reject conclusionary allegations of law and unwarranted inferences. **Silver v. H&R Block. Inc.,105 F.3d 394,397 (8th Cir.1997).** The Court may not consider materials outside the pleadings on a motion to dismiss. **Gibb v. Scott, 958 F.2d 814, 816 (8th Cir. 1992).** The court also cited **Rule 8(f) FRCP**, which holds that all pleadings shall be construed to do "substantial justice". Justice administered according to the rules of substantive law, not withstanding errors, of procedures. **Interstate Bankers Corporation v. Kennedy, D. C. Mun. App., 33 A.2d 165, 166.**It could also be argued that to dismiss a civil rights action or other lawsuit in which a serious factual pattern or allegation of a cause of action has been made would it self be volatile of procedural due process as it would deprive a pro-se litigant of equal protection of the law visa vis a party who is presented by counsel. If your pleadings are not perfect, don't panic. Federal Judges have set forth a doctrine that instructs courts

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to give some latitude to pro-se parties when they make pleading mistakes. **Picking v. Penn Railway, 151 F2d 240. In a fair system victory should go to the party with a better case, not the better representation.**

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Even if the issue of the defendants' true motivation for placing the plaintiff on administrative leave affected the qualified immunity analysis, the defendants have failed to demonstrate the absence of a genuine issue of material fact on the matter. When determining a qualified immunity issue on a motion for summary judgment, the court must still believe the evidence of the nonmovant and draw all justifiable inferences in his favor. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986) (stating that in ruling on motion for summary judgment, court is not to make credibility determinations, weigh evidence, or draw from facts legitimate inferences for movant). Even more particularly, "the determination [*10] of objective reasonableness must be based on a version of the facts most favorable to the plaintiff." Lampkin, 7 F.3d at 435. Even in light of the new evidentiary submissions by the defendants in this case, this court cannot say that the defendants are entitled to a judgment as a matter of law. The motion of the defendants for the entry of summary judgment shall be denied as to their claims of qualified immunity.

42 U.S.C. § 1983 (emphasis added). Of principal import to this issue is the Court's decision in *Monell v. Department of Social Services of the City of New York*, 436 U.S. 658, 56 L. Ed. 2d 611, 98 S. Ct. 2018 (1978). The Court held there that local governing bodies can be sued directly under § 1983 for monetary, declaratory, and injunctive relief in those situations where [**18] the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted or promulgated by those whose edicts or acts may fairly be said to represent official policy. In addition, local governments, like every other § 1983 "person," may be sued for constitutional deprivations resulting from governmental "custom," even though such custom has not received formal approval through the government's official decision-making channels. *Id.* **Even though *Monell* did not specifically address the question of whether a state university is a "person" under § 1983, its reasoning logically requires us to conclude that a state university is a "person" within the meaning of § 1983.**

Since *Monell* was announced, other jurisdictions have relied on its rationale and have declared a university to be a "person" within § 1983. n8 *See Walsh v. Louisiana [*901] High School Athletic Association*, 616 F.2d 152 (5th Cir. 1980) (while the association was neither an agency of Louisiana nor provided for under Louisiana law, the court held that it was suable as a person under § 1983); *Gay Student Services v. Texas A&M [**19] University*, 612 F.2d 160 (5th Cir.), *cert. denied*, 449 U.S. 1034, 66 L. Ed. 2d 495, 101 S. Ct. 608 (1980) (state university was a "person" for purposes of this section); *Weisbord v. Michigan State University*, 495 F. Supp. 1347 (D. Mich. 1980) (state university, its board of trustees and president were "persons" within meaning of this section); *Johnson v.*

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San Jacinto Jr. College, 498 F. Supp. 555 (D. Tex. 1980) (junior college is a "person" within the meaning of this section); *Aumiller v. University of Delaware*, 434 F. Supp. 1273, 1306 (D. Del. 1977) ("University . . . . could be treated as a person for purposes of actions brought pursuant to [§ 1983]."). Also see, Victorija Smith, Appellant, v. St. Louis University.

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5 District courts have discretion to hear pendent state claims where there is substantial federal claims arising out of a common nucleus of operative facts. **28 U.S.C. Sections 136(a). United Mine Workers v. Gibbs, 383 U.S. 715(1966)** This is a "doctrine of flexibility, designed to allow courts to deal with cases involving pendent claims in the manner that most sensibly accommodate a range of concerns and values". **Carnegie-Mellon Univ. v. Cohill 484 U.S. 343, 350(1988).** Pendent jurisdiction is a discretionary matter whereby federal court may allow assertion of nonfederal claims for which no independent jurisdictional grounds exists along with recognized federal claims between same parties who are properly before the court, provided relationship between federal claims and state claims permit conclusion that entire action before the court comprises but one constitutional case. **Schwab v. Erie Lackawanna R. Co., D.C.Pa., 303 F. Supp.1389, 1399**

Nor is the immunity granted under the doctrine to the agents and the corporation destroyed because the agents are sued individually. As the Court in *Cole v. University of Hartford*, 391 F. Supp. 888, 893 (D.Conn. 1975) put it: "Simply joining corporate officers as defendants in their individual capacities is not enough to make them persons separate from the corporation in legal contemplation. The plaintiff must also allege that they acted other than in the normal course of their corporate duties." This is not to say that there have not been exceptions to the doctrine in certain of the cases. Thus, it has been said that the doctrine is inapplicable [**37] "where the plaintiff has alleged that the corporate employees were dominated by personal motives or where their actions exceeded the bounds of their authority." Note, 13 Ga. L. Rev. at 608. We applied such an exception in *Greenville Publishing*, where, after stating that "we agree with the general rule" as, stated in the intracorporate conspiracy doctrine in *Nelson Radio*, we added that "an exception may be justified when the officer has an independent personal stake in achieving the corporation's illegal objective." 496 F.2d at 399. And in *Hodgin v. Jefferson*, 447 F. Supp. 804, 807 (D.Md. 1978) (emphasis in original), it was held that "*unauthorized* acts [of an employee] [*1253] in furtherance of a conspiracy may state a claim under § 1983(3). Thus, while authorized acts of the officials would constitute corporate action, (and hence would avoid a conspiracy charge), unauthorized acts would not." n4

Qualified immunity

Since neither Mr. Hilbun nor any of the defendant aldermen are entitled to be protected by absolute immunity in this case, the court must now analyze the applicability of qualified immunity for their actions. Hughes, 948 F.2d at 920. The defendants in this case have been sued in both their individual and official capacities. Qualified immunity will protect them, if at all, only in their individual capacity. Lynch v. Cannatella, 810 F.2d 1363, 1371 (5th Cir. 1987); Universal Amusement Co., Inc. v. Hofheinz, 646 F.2d 996, 997 (5th Cir. 1981); see Monell v. Department of Social Services, 436 U.S. 658, 98 S. Ct. 2018, 56 L. Ed. 2d 611 (1978). Qualified immunity [*22] will not preclude the liability of an officer sued in his official capacity. Universal, 646 F.2d at 997. Nonetheless, due to their status as public officials, the defendants in this case are entitled to qualified immunity for their individual liability unless the constitutional right asserted by the plaintiff was "clearly established" at the time of the plaintiff's conduct. Whether the law is clearly established turns upon whether "the contours of the right established are sufficiently clear that a reasonable official would understand that what he is doing violates that right." Thomkins, 26 F.3d 605, 606; Boddie v. Columbus, 989 F.2d 745, 748 (5th Cir. 1993); Click v. Copeland, 970 F.2d 106, 109 (5th Cir. 1992). Before determining if the right was clearly established, however, this court must determine if the plaintiff has validly asserted the violation of a constitutional right at all. Siegert v. Gilley, 500 U.S. 226, 231, 111 S. Ct. 1789, 1793, 114 L. Ed. 2d 277 (1992). Therefore, this court now turns to the claims asserted by the plaintiff in this matter.

CLINTON, PETITIONER v. PAULA CORBIN JONES
Certiorari to the United States Court of Appeals for the Eighth Circuit No. 95-1853.
Argued January 13, 1997 -- Decided May 27, 1997

Respondent sued under 42 U.S.C. Sects. 1983 and 1985 and Arkansas law to recover damages from petitioner, the current President of the United States, alleging, inter alia, that while he was Governor of Arkansas, petitioner made "abhorrent" sexual advances to her, and that her rejection of those advances led to punishment by her supervisors in the state job she held at the time. Petitioner promptly advised the Federal District Court that he would file a motion to dismiss on Presidential immunity grounds, and requested that all other pleadings and motions be deferred until the immunity issue was resolved. After the court granted that request, petitioner filed a motion to dismiss without prejudice and to toll any applicable statutes of limitation during his Presidency. The District Judge denied dismissal on immunity grounds and ruled that discovery could go forward, but ordered any trial stayed until petitioner's Presidency ended. The Eighth Circuit affirmed the dismissal denial, but reversed the trial postponement as the "functional equivalent" of a grant of temporary immunity to which petitioner was not constitutionally entitled. The court explained that the President, like other officials, is subject to the same laws that apply to all citizens, that no case had been found in which an official was granted immunity from suit for his unofficial acts, and that the rationale for official immunity is inapposite whereonly personal, private conduct by a President is at issue. The court also rejected the argument that, unless immunity is available, the threat of judicial interference with the Executive Branch would violate separation of powers.

WILL v. MICHIGAN DEPARTMENT OF STATE POLICE ET AL.

No. 87-1207

SUPREME COURT OF THE UNITED STATES

491 U.S. 58; 109 S. Ct. 2304; 105 L. Ed. 2d 45; 1989 U.S. LEXIS 2975; 57 U.S.L.W. 4677; 49 Fair Empl. Prac. Cas. (BNA) 1664; 50 Empl. Prac. Dec. (CCH) P39,067

December 5, 1988, Argued
June 15, 1989, Decided

PRIOR HISTORY:

CERTIORARI TO THE SUPREME COURT OF MICHIGAN.

DECISION: States and state officials acting officially held not to be "persons" subject to liability under 42 USCS 1983.

SUMMARY: An employee filed in Michigan Circuit Court a claim against the Michigan Department of State Police and the Michigan Director of State Police in his official capacity, alleging that both parties had denied the employee a promotion for an improper reason, in violation of 42 USCS 1983, which provides that any "person" acting under color of state law in violating another's federal

constitutional rights is liable to the injured party. After the Circuit Court remanded the case to the Michigan Civil Service Commission for a grievance hearing, the employee filed suit in the Michigan Court of Claims raising an essentially identical 1983 claim, the Civil Service Commission found in the employee's favor, and a state court judge, acting in both the Circuit Court and the Court of Claims cases, held that (1) the employee had established a violation of the Federal Constitution, (2) the State Police and the Director of State Police were persons for purposes of 1983, and (3) although the Circuit Court action was barred under state law, the Court of Claims action could go forward. The Michigan Court of Appeals, holding that a state is not a "person" under 1983, vacated the judgment against the Department of State Police and remanded the case for determination of the possible immunity of the Director of State Police from liability for damages. Granting discretionary review, and affirming in part and reversing in part the judgment of the Court of Appeals, the Michigan Supreme Court held that neither a state nor a state official acting in his or her official capacity is a "person" under 1983.

STATEMENT OF FACTS

17. All events depicted herein occurred over a ten year period, beginning around the middle of 1992 through present, unless otherwise stated.

18. PLAINTIFF has spoken verbally with the Internal Auditors, directors and managers many times at ECU stating clearly how PLAINTIFF was being treated differently from all other operators and other state employee. PLAINTIFF has been struggling with ITCS/CIS managers to get promoted in ITCS/CIS every since 1988.

18.1 PLAINTIFF sent complaints to EEOC and other government agencies about how I was being treated in ITCS/CIS. They investigated but nothing changed. When I originally filed my first complaint, all I did it for was to get federal attention on the matter thinking that with a federal investigation the DEFENDANTS would change, but I was wrong things got worse.

18.2 The DEFENDANTS shows no respect for federal law, state law or the equal opportunity policies of East Carolina University.

18.3 PLAINTIFF did many things to try to get ITCS/CIS Management Team to correct the wrongs that they had done to PLAINTIFF, which included but was not limited to filing claims to EEOC and the U.S Department of Labor both organization are located in Raleigh, NC.

18.4 Plaintiff believes that the aforementioned government organizations were misled in their investigate of Plaintiff complaints for no action were taken, even though my rights had clearly been violated and clearly illustrated in the complaint.

18.5 The first complaint that I sent to EEOC in 1997, was patterned after the McDonnell Douglas framework, wherein initially I was required to show that (1.) I had applied for and qualified for a position

with ECU, (2.) that I was rejected for the position and (3.) and that the DEFENDANTS continued to seek applications for the position, or was filled with a white person. Which is exactly what happened to me, the position was given to a white person. PLAINTIFF still have a copy of this complaint.

19. To date PLAINTIFF has received no help from anyone, PLAINTIFF still has not been promoted or advanced in any way. Therefore, PLAINTIFF had no other choice but to expose the harassment, conspiracies against rights, deprivation of rights and to seek justice by acquainting himself with the appropriate laws to bring this action in Court Propria Persona.

19.1 To date PLAINTIFF has been subject to continuous and countless conspiracies orchestrated by DEFENDANTS to willingly, maliciously and intentionally deprive PLAINTIFF of his rights to receive progress interim pay increases, promotions, reclassifications, training and the opportunity to do the job that PLAINTIFF has been assigned to do without being threatened or harassed as has benefited and enjoyed by some, if not all, other operators.

20.Because of numerous complaints sent to the Chancellors office about PLAINTIFF and other minorities being intentionally denied promotions in ITCS/CIS, in August of 1992, the Internal Auditor, with the backing of the Chancellor's office, instructed ITCS/CIS to open up five new training positions. These steps were taken to insure that PLAINTIFF, other minorities and senior operators who had been passed over many times would have the opportunity to train first and move on to higher paying jobs.

20.1PLAINTIFF should have been among the first operators trained in the new positions, since PLAINTIFF and other minority operators were the employees pushing to get something done so that all operators could advance. PLAINTIFF was also one of

the most senior operators and the only black male that participated.

20.2 DEFENDANTS BOLTON, MARSHBURN, and SCHWARTZ who were members of the ITCS/CIS Management Team (hereinafter, PAC), were some of the managers in charge of setting up the training program.

20.3 PAC is an enterprise that has operated in ITCS/CIS for over 18 years. The DEFENDANTS that make up the team (association in fact) make all of the major decisions (managerial, budget (handling the excess in the budget), promotions, reclassifications, restructuring the department, training, etc).

20.4 PAC asked PLAINTIFF if he would agree to allow them to pick the operators that would be trained the way PAC wanted to, to get their plan started. PAC insured PLAINTIFF that he would have his chance to train.

20.5 PLAINTIFF agreed with PAC which established a verbal contract between PLAINTIFF and PAC.

20.6 PLAINTIFF didn't know that PAC had conspired to deceive him. PAC had come up with a plan that led me to believe that PAC would be fair and treat all operators equally.

20.7 PLAINTIFF has a degree in Electronic Data Processing which trained me to write computer code such as Cobol, Fortran and RPG. Therefore, I would have needed very little training to have become an excellent computer programmer for ECU, but I was denied that opportunity.

20.8 On or about October 15, 1992, PAC denied PLAINTIFF another opportunity to participate in the training program. PAC chose two white operators that was not senior to me nor did they participate in the struggle to get the program started.

20.9 Shortly thereafter, the training program was closed. PAC breached its agreement with PLAINTIFF.

When PAC denied me an opportunity to train, PAC breached it's contract with me and caused me to become an injured party.

21. On or about the middle of spring, 1992 State Personnel (hereinafter, SP) concluded a study of all Computer Operations / Data Processing positions in ITCS/CIS and gave their report that should have made provisions for all operators to advance. PLAINTIFF was denied a reclassification.

21.1 PLAINTIFF should have advanced from an operator II to an Operator III which would have given me a sizeable raise. Shortly thereafter, PLAINTIFF's job title was changed from a Computer Operator II to a Computer Operator. This was a lower grade than PLAINTIFF was hired with This was a trick by BOLTON and other unknown conspirers to prevent PLAINTIFF from getting an authentic reclassification.

21.2 On or about June 20, 1994, after SP did another study of all operators positions (many of the operators complained to SP that they had not been reclassified), shortly thereafter BOLTON revised all computer operators positions again which changed PLAINTIFF position from a Computer Operator to a Senior Computer Operator.

21.3 When PLAINTIFF was moved to a higher grade, the changed only put PLAINTIFF back to PLAINTIFF's original position, a Computer Operator II. The Computer Operator Senior and the Computer Operator II is basically the same position, because my grade went up but salary stayed the same.

21.4 BOLTON told PLAINTIFF that because my salary was already at the top of my new pay grade, I would get very little or no raise. PLAINTIFF received about a $10.00 more a month pay raised, which other operators received much more. All other operators were reclassified to Senior Computer Operators (who

were grades lower than PLAINTIFF) and their pay were adjusted to match the pay grade giving them large raises.

21.5 When BOLTON told PLAINTIFF that I was already at the top of my pay grade, BOLTON was not telling the truth, for PLAINTIFF is at the same pay grade today (about seven years later) and PLAINTIFF is just half way now according to the salary chart posted on the State Personnel website. When PLAINTIFF was denied a reclassification to Lead Operator Position, PLAINTIFF suffered a great financial loss and became a injured party.

21.6 PLAINTIFF was denied another opportunity to be reclassified to Lead Operator in November of 1994 by BOLTON.

22. PLAINTIFF has applied for over 25 positions at ECU since I was hired and was denied each time although PLAINTIFF was qualified for either position. PLAINTIFF has been denied the clearly established right to equal protection of the law. When one consider that Plaintiff has worked for ECU for over 18 years, it is hard to believe that Plaintiff is still in the same position Plaintiff started with.

22.1 PLAINTIFF has five years of experience in installing and repairing telephones that included but not limited to splicing and installing cables, pulling cables and installing the telephones in homes and business. PLAINTIFF also had experience in wiring houses installing panel boxes, electrical wires, sockets, fixtures, etc. All this experience combined with my computer knowledge made me an excellent pick for jobs in telecommunications or networking.

22.2 Also PLAINTIFF was a Communications Specialist in the U. S. Army, wherein PLAINTIFF was trained to set up large field radio (31M and O5C) that included, but not limited to, connecting cables, setting up antennas, mounting the equipment and tuning the equipment to pick up the proper

transmitting site (similar to microwave communications).

22.3 PLAINTIFF supervised and trained other soldiers to run the equipment, yet PLAINTIFF was denied many opportunities to be promoted or to even train to work in the telecommunication or networking field.

22.4 On or around February 15, 1994 PLAINTIFF was qualified for and applied for a Telecommunication Equipment Technician and was rejected. PLAINTIFF applied for numerous other Telecommunication jobs but was rejected each time.

23. For the last seven or eight years DEFENDANTS BOLTON and NOBLES conspired to control three positions; the Operations Manager, First Shift Supervisor and First Shift Lead Operator, arranging those jobs in such a way that clearly deprived a Lead Operator position from being opened on first shift which should have made an opening for PLAINTIFF to advance.

23.1 When their was a Lead Operator's position, BOLTON moved that position to the weekend because he knew PLAINTIFF wouldn't want to give up a 8 to 5, Monday through Friday job to work on week ends. PLAINTIFF did apply for the Lead Operator's position although it was on the weekend but again I was denied a promotion two times. On both occasions the jobs were given to white operators.

23.2 The other shifts (2nd and 3rd) always had a Supervisor and Lead Operator on Monday-Friday.

23.3 HOWELL, (who was the Lead Operator for third shift) was eventually moved to first shift and filled the slot for the Lead operator position. This was another way of preventing PLAINTIFF from advancing, for 1st shift could not have but one Lead Operator. HOWELL has held the Lead Operator slot on first shift for years, which should have been the Lead Operator position for me.

23.4 There has always been an open slot (Operation Manager) between BOLTON (the formal Director of Operations and NOBLES (the first shift supervisor) that should have been filled by NOBLES that would have opened a 1st shift supervisor slot that should have gone to PLAINTIFF since PLAINTIFF was the senior and most experienced operator in the department and on first shift. PLAINTIFF was denied both the Lead Operator and the Supervisor.

24 For most, if not all, of the time that PLAINTIFF has been hired for ECU, DEFENDANTS NOBLES or HOWELL were always responsible for giving me a performance rating (evaluation). In each review, regardless as to how perfectly PLAINTIFF performed his duties, PLAINTIFF was never given a performance rating that would measure up to getting a performance pay increase, nor did it reflect PLAINTIFF true performance grade.

24.1 The aforementioned DEFENDANTS would always give PLAINTIFF a bad grade in one or maybe two categories (good or below good) which would stop PLAINTIFF from getting a performance bonus. I believe that the DEFENDANTS denied PLAINTIFF a good grade as a means of increasing their own percentage raises (obtaining a benefit that they would not have normally gotten).

24.2 HOWELL has participated in grading PLAINTIFF when he would benefit when PLAINTIFF was given a bad performance grade. This gave HOWELL an incentive to give PLAINTIFF a bad grade. When PLAINTIFF did not get a performance increase, the excess money left in the budget could be divided between HOWELL, NOBLES and other DEFENDANTS.

24.3 Although HOWELL and PLAINTIFF started working for ECU about the same time, in fact, PLAINTIFF was a computer operator before HOWELL, and more educated, PLAINTIFF estimate that

HOWELL earns $15,000.00 more a year than PLAINTIFF.

24.4 To further prevent PLAINTIFF from being promoted and having a good working relationship with the other operators, DEFENDANTS BOLTON, HOWELL and NOBLES slandered PLAINTIFF's good name, calling PLAINTIFF lazy, calling PLAINTIFF an idiot and telling other new operators that PLAINTIFF would just sit in the corner and write poetry all day and make them do all the work.

24.5 Once BOLTON, while PLAINTIFF was training a student, told that person to not believe a word PLAINTIFF said, clearly creating some doubt in the mind of the student about the abilities of PLAINTIFF as well as the type of person PLAINTIFF was. Tactics like that caused many conflicts between PLAINTIFF and newly hired operators who caused PLAINTIFF a tremendous amount of needless stress.

24.6 The aforementioned DEFENDANT knew that the statements were not true, and knew or should have known that all negative information would spread rapidly and would destroy PLAINTIFF's good name.

25. On February 2, 1996 DEFENDANTS BOLTON and HUTCHINSON conspired to willingly and intentionally deprive PLAINTIFF and other operators another opportunity to advance. The job title was a Computer Specialist III, Job #030. The Computer Specialist III was one of the aforementioned training positions that the "Auditor" said should be filled by operators that had been closed by PAC.

25.1 As a way to deny PLAINTIFF the position, the job description was changed to require a four-year degree (which has never been a requirement). The DEFENDANTS chose a person who was not a state employee to fill the job, who was not as qualified as PLAINTIFF. The person who received the job did not

have a four year degree and was not a state employee at the time.

25.2 PLAINTIFF was clearly qualified for the position and was working for the state at that time. It is a clearly established state hiring policy that states that when filling a vacant position, if there is a qualified person already working for the state applying for that position, that person has "priority consideration" for the opened position over anyone from the outside.

26. In January of 1997 three Applications programmer II jobs (job number #009, #010 and #44645) were opened that PLAINTIFF was qualified for and applied for. PLAINTIFF should have been allowed to, at least, train in one of the positions since PLAINTIFF had already been passed over for promotions and training many times.

26.1 The job description required that the applicant have at least a two year degree in Data Processing with Cobol experience, which PLAINTIFF has both. Yet, PLAINTIFF was again denied a promotion three times.

26.2 On March 14, 1997 jobs #009 and #010 were re-advertised, although PLAINTIFF was clearly qualified for either position. On April 1, 1997 a white operator was given positions, job #44645, who didn't have a Data Processing degree nor Cobol experience.

26.3 PLAINTIFF was discriminated against when PLAINTIFF was deprived of an opportunity to be promoted, instead the job was given to an employee who didn't have Cobol training nor a college degree. "PLAINTIFF was clearly qualified yet denied the position and became an injured party.

26.4 On May 25, 1997, two other operators were given the remaining two positions #009 and #010 . Both of the positions were given to two white operators, one did not have Cobol training and

neither of them had as much seniority as PLAINTIFF. PLAINTIFF became an injured party when the aforementioned DEFENDANTS willingly and intentionally denied PLAINTIFF two more opportunities to be promoted.

27. On or about February 1, 1998 BOLTON assigned PLAINTIFF a project to help PLAINTIFF to be promoted (so I was led to believe). PLAINTIFF had to set up an Internet website. I thought that this was a great opportunity, for in the past all operators that did a project in the department, of any kind, was eventually hired into higher paying positions.

27.1 PLAINTIFF, without hesitation, took on the challenged and within thirty days had set up a website that work perfectly. In fact, PLAINTIFF was one of the first employees in the department to learn HTML, the main programming language used to set up a website.

27.2 Although PLAINTIFF had illustrated to BOLTON and other managers that I could do the work, I was denied three opportunities to be promoted to a Web Developing position and two system positions. All five of these position were opened at the same time, and I was interviewed and qualified for all five of them.

27.3 On or around October 26, 1998 PLAINTIFF applied for another Application Analysts. Prog. I, job # 08325 that "PLAINTIFF" was qualified for (one of the three aforementioned web developing jobs), John Snowden, who was hired for the position resigned.

27.4 PLAINTIFF had already been interviewed for the position as mentioned above, and had shown BOLTON and the former Web project manager that PLAINTIFF could do the work by doing a project, but PLAINTIFF was again denied an opportunity to be promoted.

27.5 On or around November 8, 1998 PLAINTIFF applied for 2 System Programmer I (positions 8718 and 8719) and although I was qualified I was denied

either of the positions. Hudson gave both of these positions to two white operators, who were no more qualified for the position than PLAINTIFF.

28. On or about September 1, 2000 BOLTON and NOBLES conspired to have PLAINTIFF transferred into one of the worst positions in the department. ITCS/CIS had taken responsibility for another computer center (Brody School of Medicine computer center (hereinafter, GE99)).

28.1 PLAINTIFF believes unequivocally that BOLTON was retaliating against me for being a witness in a discrimination lawsuit against ECU, specifically ITCS/CIS. In the trail, I was asked a series of questions which I swore under oath that I would tell the truth, and that was all I did.

28.2 BOLTON'S plan was to have all operators cross-trained to operate the computer systems at both locations, GE99 and Austin Building Computer center, (hereinafter, Austin). PLAINTIFF was one of the first operator sent to GE99 to train, and the only operator from any shift who was transferred permanently to GE99.

28.3 PLAINTIFF was told that he would only stay for a short time (3-4 months), afterward PLAINTIFF would be sent back to his original position at Austin and another 1st shift operator (Rich Proctor) would have to go to GE99 to train. It is easy to see now that the plan was for PLAINTIFF only to be sent to train at the other site and once over there, I would never get my old job back.

28.4 The aforementioned 1st shift operator, did not cross-train at all. To date he has not cross-trained. While PLAINTIFF had to learn old technology, he was at AUSTIN being trained to operate some of the world's most modern Servers. He has been in the department for only a few years, and is being trained to do a job that would pay him much more money.

28.5 The aforementioned operator was moved permanently into PLAINTIFF slot at Austin while PLAINTIFF was helping ITCS/CIS to improve GE99. I became an injured party when I was transferred to GE99 (without my knowledge), forced to learn old useless technology and PLAINTIFF's position at Austin was given to another operator.

28.6 All other operators and manager who were running GE99 were either promoted, reclassified or given permanent positions and the heavy burden that they were carrying was lifted. Although PLAINTIFF has been forced to carry much of the weight that was taken off them, PLAINTIFF has not been treated equal to them. PLAINTIFF has not been promoted nor reclassified, yet I carried much of the burden that they once carried and became an injured party.

28.7 While at GE99 PLAINTIFF was forced to learned the operations at that site so that others operators could get promotions, while PLAINTIFF was being denied that opportunity and falling behind on the newer technologies that PLAINTIFF could have learned at Austin.

28.8 Plaintiff was forced to learn another persons job so the she could get promoted, but I was not allowed to train so that I could get promoted. In other words, I am smart enough to learn someone else's job, but was qualified to learn another job so that I could be promoted.

29. Around the middle of 2001 DEFENDANT NORRIS, BOLTON and SCHWARTZ conspired to deprive PLAINTIFF and other operators the opportunity to advance by moving the Help Desk out of Operations and from under the supervision of BOLTON to NORRIS supervision. When this first happened PLAINTIFF thought that this was a good move because it lifted some of the burden from the operators. PLAINTIFF did not know that this move

was only a disguise to deprive PLAINTIFF of a way to be promoted.

29.1 For years PLAINTIFF and other operators handled the Help Desk, assisting users daily. PLAINTIFF dealt with all types of user problems that involved both hardware and software troubleshooting. PLAINTIFF went to seminars to learn to run the PHD program, the Help Desk software for logging, following up and assigning user problems to the proper person who could handle their specific need.

29.2 When the Help Desk was moved and new people were hired to do those jobs, their starting grade was 59 or 60. This was five to seven grades below all the operators who were working at that time. Therefore even if PLAINTIFF or any other operator wanted the jobs, it would not make sense to take one because it would be a big cut in pay.

29.3 Shortly after the new employees were in their positions NORRIS reclassified their positions to Consultant I with a pay grade of 70. These people who were less qualified than most, if not all, operators were upgraded 10 pay grades (60-70), and this was done to avoid promoting PLAINTIFF or any other computer operators who had the Help Desk responsibilities for years, and who are clearly qualified for the Consultant I position.

29.4 These new employees were given about a $10,000.00 yearly raise. PLAINTIFF was denied an opportunity to even to apply for those Consultant I positions, clearly depriving PLAINTIFF of a big raise.

29.5 PLAINTIFF never thought that one day the Help Desk jobs would be reclassified five grades above the Senior Operator grade or three grade levels above the Lead Operator only a few months after the positions were filled.

29.6 Today, the Help Desk seems to be used as a back door for NORRIS and other managers

to get new employees into the department clearly avoiding PLAINTIFF or any operator and shortly thereafter upgrading them to higher paying jobs, clearly denying PLAINTIFF or any other operator an opportunity even to apply for the Consultant I positions.

29.7 The Consultant I position should be another training or entry level position established so that all Computer Operators would have a career path. Computer operators do not have a career path at ECU.

30. On or about October 1, 2001, HOWELL became PLAINTIFF new supervisor. On October 17, 2001 (only two weeks later) HOWELL issued PLAINTIFF the first written warning in ITCS/CIS since PLAINTIFF had started working for ECU.

30.1 No one in the department has ever been written up for not getting the personal approval of his supervisor when calling in to take a day off, being late, sick or whatever the circumstance may have been, as PLAINTIFF was.

30.2 Although, most if not all, operators were doing the same thing PLAINTIFF was doing, (calling into the active shift and letting them know that they would not be in), in fact HOWELL was doing it himself, no other operator had ever been written up for it. I was deprived a privilege that all other operators were allowed to enjoy and was almost terminated because of it.

30.3 PLAINTIFF discovered later that this was the beginning of conspiracy spear-headed by DEFENDANTS HOWELL, NOBLES, BOLTON and other co-conspirators to have PLAINTIFF terminated. At the time that I received the written warning I was not aware that there was a problem between Howell and I. My side of the situation was never heard before I was almost terminated.

30.4 A few month prior to PLAINTIFF being written up, PLAINTIFF was told by David Whitehurst that

HOWELL had called him and ask him did he want to work on first shift, because HOWELL was going to get rid of PLAINTIFF.

30.5 PLAINTIFF consulted with BOLTON about the situation and even asked to be moved back to PLAINTIFF original slot at Austin, but since it caused so much troubled with the other operators, (because none of them wanted to work with HOWELL), PLAINTIFF emailed BOLTON and said that PLAINTIFF would try to work things out with HOWELL.

30.6 PLAINTIFF was unaware at that time that BOLTON was working with HOWELL and NOBLES to have PLAINTIFF terminated. PLAINTIFF became aware of the conspiracy while reading the written warning wherein the intent of the DEFENDANTS were made much clearer.

30.7 In furtherance of HOWELL, NOBLES and BOLTON's plan to have PLAINTIFF terminated, a couple of weeks after issuing me the written warning, HOWELL gave me the worst progress interim review (performance evaluation) I have ever had. This was done in furtherance of the conspiracy, specifically to help justify another written warning.

30.8 Even in the progress interim review that should have been telling PLAINTIFF the areas in my work performance that should be improved, not only did HOWELL lie and made misleading statements, but even in the evaluation HOWELL had threats of further disciplinary action, including dismissal.

30.9 On or about November 17, 2001 HOWELL issued PLAINTIFF a second warning that was a direct result of the first warning. In other words, the second warning was a direct result of DEFENDANTS HOWELL and NOBLES threats and harassment relating to the first warning. PLAINTIFF was treated unfairly when HOWELL issued

30.10 PLAINTIFF the first written warning, and PLAINTIFF was harassed and provoked only a few days after receiving it. The threats and intimidation from the DEFENDANTS forced me into making a choice that resulted in me getting written up the second time.

31. When HOWELL issue PLAINTIFF two written warnings threatening me with further action (termination) in less than two months after becoming a supervisor, it was easy for PLAINTIFF to believe that HOWELL, NOBLES and BOLTON and other unknown conspirators had plotted to have PLAINTIFF fired, especially when one consider that other operators had done the very same things a few days later and nothing was done to them and I was written up and almost terminated.

31.1 The thoughts of being terminated caused PLAINTIFF a tremendous amount of stress worrying about how PLAINTIFF would be able to provide for myself and my family. PLAINTIFF knew how devious HOWELL and NOBLES are after working with them for 18 years. I knew that both of them hated me enough to have me fired if they could find a way.

31.2 When you consider the fact that PLAINTIFF was only following the established patterns and practices enjoyed by all operators, including HOWELL, when PLAINTIFF was issued the first written warning it can be clearly seen that HOWELL was planning to get PLAINTIFF fired. PLAINTIFF was denied the same rights and privileges that all other operators were allowed to enjoy freely.

31.3 Although management is aware of the problems between HOWELL and PLAINTIFF, and although I have requested to go back to my original position at the Austin Building, management has taken no action to move PLAINTIFF from under the supervision of HOWELL.

31.4 When PLAINTIFF requested to be returned to PLAINTIFF old position at Austin because of the threats, intimidation, and harassment that PLAINTIFF was being put through by HOWELL, BOLTON told me that I would have to request a transfer, then he would see what his options were at that time as to where he would place me.

31.4 PLAINTIFF sent BOLTON a letter stating clearly that BOLTON did not have the authority to give PLAINTIFF position to anyone and that he was wrong. PLAINTIFF refused to ask for a transfer because PLAINTIFF never asked to be moved in the first place. All other employees were given the opportunity to volunteer temporarily to work at GE99.

31.5 Since PLAINTIFF didn't know that he had been transferred, PLAINTIFF sent BOLTON a letter asking for the particulars (date, reason, etc.) of PLAINTIFF's transfer. I needed to know since I had never signed any papers requesting a transfer. To date BOLTON has not responded to PLAINTIFF request for that information.

31.6 To date PLAINTIFF is being monitored endlessly by HOWELL, for most, if not all of an entire eight hour shift, obviously taking notes of PLAINTIFF actions. HOWELL desk is only a few feet from PLAINTIFF work area, and in a position where HOWELL can see ever move PLAINTIFF makes.

31.7 HOWELL constant peeping at PLAINTIFF is bad enough, but it is really nerve racking when every time I look up, I have to look at HOWELL doing absolutely nothing but chatting with his friends and watching PLAINTIFF. It is very stressful to think that he is trying to find things that he can note about me to turn over to Human Resources when I am doing the work that both of us should be doing. When things get really busy, Howell won't even answer the door to help the users.

31.8 HOWELL said that Noble told him that he didn't have to work and that he should watch me and take notes on me. It really isn't a problem when my co-worker (Barbara) is working, but when I have to do it all, it is unfair and much to stressful. It seems that all HOWELL is really capable of doing is manipulating things to make my job harder. The way HOWELL, BOLTON and NOBLES seem to see things is that as long as PLAINTIFF is doing all the work, they don't care if any other operator do anything or not.

31.9 It is as if HOWELL is being paid a tremendous amount of money just to watch PLAINTIFF and to document every little thing that PLAINTIFF do daily to make a case against me. . I feel that I have no help and management is allowing HOWELL to set me up for further disciplinary action in the very near future.

32. Every since PLAINTIFF has been supervised by Noble and HOWELL, PLAINTIFF shift has always been over burdened with work . Instead of the work being evenly split over all the shifts, wherein all operators would be treated equally, NOBLES and HOWELL manipulated most of the work to first shift.

32.1 On days that a good manager or supervisor would have extra bodies, if possible, on his shift because the work load was extremely heavy and stressful, Noble and HOWELL would tell some of the other operators not to do any work and let PLAINTIFF do it all. Then neither of them would help do the work themselves.

32.2 This created a very hostile working environment for PLAINTIFF , because many of the other operators feared Noble and HOWELL so much that they participated in the DEFENDANTS little schemes. These types of actions breeds a hostile environment and because of all the unnecessary work being forced on PLAINTIFF, PLAINTIFF became an injured party.

32.3 Just the thought of having to return to work under these hostile conditions is extremely stressful,

causing PLAINTIFF blood pressure and pulse rate to raise for beyond there normal rates but I need my job therefore I have to put up with it as long as I can.

32.4 It would take about twice as many pages in this complaint if PLAINTIFF was to tell all the things that was done to PLAINTIFF by DEFENDANTS BOLTON, NOBLES and HOWELL. PLAINTIFF is really embarrassed to file this complaint, but something has to be done to bring an end to the harassment, intimidations and threats that PLAINTIFF and other operator has to endure daily.

32.5 The threats, harassment and intimidation are so bad, specifically against me, that many of the other operators has often asked PLAINTIFF, how have you been able to put up with this type of harassment all these years. I can only say quietly within that it was only by the grace of God.

32.6 PLAINTIFF knows that PLAINTIFF has no other alternative but to file this lawsuit (other than quitting) to get treated equally or to even do the job that PLAINTIFF is assigned to do without being harassed, intimidated, threatened and being over burdened with work by aforementioned DEFENDANTS, and other unknown co-conspiracies for it is clear that no one is going to do anything about it.

32.7 As a way of ending this statement of fact, PLAINTIFF want to point out one more incident to help further my reasoning to believe that I have been willingly and intentionally conspire against in ITCS/CIS.

32.8 On or around March of 2000, PLAINTIFF was nominated for the 2000 Chancellor's Synergy Award. This was while PLAINTIFF was helping the ITCS/CIS improve GE99 site. No director, manager or supervisor thought enough of PLAINTIFF good work to even tell me about my nomination. I found the card in my Austin locker (DEFENDANT didn't even send it to GE99) about a year after the ceremony.

32.9 Strangely, most if not all, of the employees in ITCS/CIS was nominated for that same award, which I believe is the first time in the history of the university that a whole department was nominated for that award. This clearly made my nomination really worthless, even if I had been able to be at the ceremony.

33. The DEFENDANTS really have PLAINTIFF back against the wall, therefore I have no other choice but to defend myself, and I will do that to the best of all my abilities and with the help of my God that I truly serve.

33.1 PLAINTIFF is not going to quit, because this is what the DEFENDANTS want PLAINTIFF to do. Instead I decided to allow the federal court of the United States to handle it.

34. DEFENDANT's actions, herein, were committed with the intent to violate the PLAINTIFF rights.

35. All DEFENDANTS and higher ranking officials knew or should have known that the actions of their employees would violate clearly established law.

OPS North Carolina Office of State Personnel

April 16, 1991

Received
4/18/1991
Received
ECU
Personell

MEMORANDUM

To: All Agency and University Personnel Offices

From: Pam Bowling, Personnel Analyst PB
Position Management Division

Subject: Computer Operations/Data Processing Study

This is to update you on the status of the study and to inform you of our study plans from this point. To date, we have started the interviewing process for the agencies in Phrase 1 and 2. However, circumstances are causing us to delay this process until early fall. At that time we will resume full force on the study by completing the interview phrase and proceeding into analysis quickly after that. We expect to have tentative concepts and conclusions by early 1992. Therefore, due to time frames by the State Personnel Commission, implementation will not occur until Spring of 1992.

If you have any questions concerning this matter, please feel free to contact me at 733-3182.

OW

(Note: this is a reproduction)

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EAST CAROLINA UNIVERSITY

GREENVILLE, NORTH CAROLINA 27858-4353

OFFICE OF THE CHANCELLOR

March 8, 1988

I would like, by this letter, to respond to your concerns regarding hiring and promotion decisions in Computing and Information Systems. As you know, I was deeply concerned by the questions you raised and I have been eager to resolve the problem.

We have recently come through a difficult period in CIS. A number of personnel changes have been made and this is always quite disruptive. However, I am satisfied now that we are in a good position to move forward. I am confident that we will see great things from CIS in the near future!

Concerning specific personnel actions, I have reviewed each hiring or promotion decision which you brought to my attention. There does not appear to be a pattern of racial discrimination. However, I intend to look beyond a review of past decisions. Let me give you my personal assurance that, consistent with the Affirmative Action Policy to which I and my staff are strongly committed, we will give utmost consideration to the applications of black employees in CIS. Black applicants will be seriously considered for each vacancy for which they are qualified.

Do not hesitate to call Mr. Dick Farris or Dr. Mary Ann Rose in the future if you have concerns or questions. I thank you for your patience in this matter and for the trust you have placed in me.

Sincerely,

Richard R. Eakin
Chancellor

RRE/ra

cc: Vice Chancellor C.G. Moore
Mr. Richard Farris
Dr. Mary Ann Rose

App. 45

Civil Action No. 1:93CV122-D-D

UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF MISSISSIPPI, EASTERN DIVISION

823 F. Supp. 1321; 1993 U.S. Dist. LEXIS 8318

June 11, 1993, Decided

In the motion presently before the court, the defendants charge that there is no genuine issue of material fact as to whether the plaintiff's statements to the press were a "substantial" or "motivating" factor behind the decision of the defendants to place him on administrative leave. Since the plaintiff cannot establish this fact, they continue, the defendants are entitled to qualified immunity. While certainly relevant to the core issue of the merits of the plaintiff's First Amendment claim, the undersigned fails to see how this particular argument has any bearing on the question of immunity. This court does believe, however, that it understands the source of this confusion. In its unpublished opinion, the Fifth Circuit found that genuine issues of material fact existed as to the "basis of the Board's decision," and appears to have found this issue material to the determination of qualified immunity. Maxey v. Smith, No. 94-60794, slip op. at 12 (5th Cir. Jun. 21, 1995). The Fifth Circuit went on to dismiss the defendants' appeal on qualified immunity [*5] because of relevant disputed factual issues. Baulch v. Johns, 70 F.3d 813, 815 (5th Cir. 1995) ("[A] district court's denial of a qualified immunity summary judgment is not appealable when there are disputed issues concerning the immunity claim.") (citing Johnson v.

Jones, 515 U.S. 304, 115 S. Ct. 2151, 2159, 132 L. Ed. 2d 238 (1995)).

The determination of qualified immunity is a three-pronged inquiry. The court must determine:

> 1) if the plaintiff has asserted the violation of a constitutional right at all;
>
> 2) if the law was clearly established at the time of the official's action; and
>
> 3)the objective reasonableness of the official's conduct as measured by reference to clearly established law.

Pitt Community College

Greenville, North Carolina

By authority of the State Board of Education

and upon the recommendation of the Faculty, the Board of Trustees

hereby confers upon

Linwood E. Mooring

the degree of

Associate in Applied Science

Business Administration

together with all the rights, honors and privileges appertaining thereto

Given this month of May, nineteen hundred and eighty-ten

Clifton W. Everett Sr.
Chairman of the Board of Trustees

William E. Crawford Jr.
President of the College

Pitt Community College

Greenville, North Carolina

By authority of the State Board of Education

and upon the recommendation of the Faculty, the Board of Trustees

hereby confers upon

Linwood E. Mooring

the degree of

Associate in Applied Science

Industrial Management Technology

together with all the rights, honors and privileges appertaining thereto

Given this month of March nineteen hundred and eighty-two

Clayton W. Everett Sr.
Chairman of the Board of Trustees

William E. Fulford Jr.
President of the College

Pitt Community College

Greenville, North Carolina

By authority of the State Board of Education

and upon the recommendation of the Faculty, the Board of Trustees

hereby confers upon

Linwood E. Mooring, Jr.

the degree of

Associate in Applied Science

Electronic Data Processing: Business

together with all the rights, honors and privileges appertaining thereto

Given this month of May nineteen hundred and eighty-four

Clifton W. Everett Sr.
Chairman of the Board of Trustees

Charles E. Russell
President of the College